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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,702	08/07/2001	Fumitake Yodo	SONYJP 3.3-1245 DIV I	1747
530	7590	08/25/2008	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			BUCHANAN, CHRISTOPHER R	
			ART UNIT	PAPER NUMBER
			3627	
			MAIL DATE	DELIVERY MODE
			08/25/2008	PAPER

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FUMITAKE YODO

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Appeal No. 2008-0274  
Application No. 09/923,702  
Technology Center 3600

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Decided: August 25, 2008

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Before MURRIEL E. CRAWFORD, LINDA E. HORNER and MICHAEL W.  
O'NEILL, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claim 9. We have jurisdiction under 35 U.S.C. § 6(b) (2002). The Appellant appeared for oral hearing on July 8, 2008.

Appellant invented an accounting system including a first controller that updates attributes of information stored in the storage medium of a portable device from an unavailable state to an available state. (Specification 1.)

Claim 9 under appeal reads as follows:

9. An accounting system including an accounting center and a terminal device communicating with the accounting center,

the terminal device comprising:

a first memory configured to store accounting points, the first memory being built-in in the terminal device;

a second memory configured to store distributed information distributed from an external source;

a first controller configured to update the accounting points stored in the first memory and to update attributes of the distributed information when the distributed information is stored in the second memory;

a second controller configured to transmit a request for purchasing the accounting points to the accounting center and to update the accounting points stored in the first memory based on an accounting processing corresponding to the accounting points executed at the accounting center; and

a detector configured to detect whether a portable device with a storage medium is connected to the terminal device, wherein

when the distributed information is stored in the second memory, the first controller updates the attributes of the distributed information to an unavailable state and updates the accounting points stored in the first memory based on the distributed information, and

when the accounting points are not updated correctly, the second controller transmits the request for purchasing the accounting points to the accounting center

and updates the accounting points, and the first controller updates the attributes of the distributed information from the unavailable state to an available state, and

when the detector detects that the portable device is connected to the terminal device, the first controller updates attributes of information stored in the storage medium of the portable device from an unavailable state to an available state after the accounting points are updated correctly, and

the accounting center comprising:  
a third controller configured to carry out an other accounting processing based on the request for purchasing the accounting points transmitted from the terminal device by the second controller.

The Examiner rejected claim 9 under 35 U.S.C. § 103 as being unpatentable over Peterson.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Peterson	US 5,857,020	Jan. 5, 1999
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Appellant contends that Peterson does not disclose or suggest that when the detector detects that a portable device is connected to the terminal device, a controller updates attributes of information stored in the storage medium of the portable device from an unavailable state to an available state after the accounting points are updated correctly.

### ISSUES

The issue is whether the Appellant has shown that the Examiner erred in rejecting the claim because Peterson does not disclose or suggest a controller that, when the detector detects that a portable device is connected to the terminal device,

updates attributes of information stored in the storage medium of the portable device from an unavailable state to an available state after the accounting points are updated correctly.

### FINDINGS OF FACT

Appellant discloses an accounting system which includes an accounting center 1 and a terminal device 10 (Figure 1). The terminal device 10 includes a first memory 45 which stores accounting points and a second memory 15 which stores information distributed from an external source (Figure 3; Specification 15 to 16). The terminal device includes a first controller configured to update accounting points stored in the first memory 45 (Specification 15) and to update attributes of the distributed information when the distributed information is stored in a second memory (Specification 50 to 51). The system includes a portable device 50 which includes a storage medium (Specification 8 to 9). The terminal device also includes a detector MT configured to detect whether the portable device 50 is connected to the terminal device 10 (Figure 1; Specification 9 to 10). When the detector detects that the portable device 50 is connected to the terminal device 10, the first controller updates attributes of the information stored in the storage medium of the portable device 50 from an unavailable state to an available state. The first controller does this by directly accessing the memory on the portable device and sending information to the memory. In this regard, the Specification states at page 57:

Subsequently, at step S86, the CPU 11 regards that the fee has been paid for the file in the use prohibition state stored on the HDD 54 of the portable device 50, and sets the information use permission flag in the on-state, that is, the use permission state. Specifically, the CPU 11 sets the information use permission flag in the on-state by *directly accessing* the HDD 54 or through CPU

51. Thus, the user can use the chargeable information downloaded to the portable device 50. (Emphasis added.)

Peterson discloses an accounting system which includes an accounting center 16 and a terminal device 10, 12 and 14 in Figure 1 and 70, 86, 98 in Figure 3). The terminal device includes a first memory 34, 91 that stores accounting points and a second memory 26, 79 that stores information distributed from an external source. The terminal device includes a first controller configured to update accounting points stored in the first memory 34, 91 (col. 4, ll. 9 to 15). Peterson does not disclose a portable device apart from the terminal device 70, 86 and 98. Therefore, Peterson does not disclose a terminal device and a detector that detects when a portable device is connected to the terminal device and updates attributes of information stored in the storage medium of the portable device from an unavailable state to an available state as required by claim 9.

#### ANALYSIS

We will not sustain the rejection of the Examiner. Firstly, we agree with the Appellant that although a portable device is not positively recited in claim 9, the language of claim 9 defines a first controller which updates attributes of information stored on the storage medium of a portable device when the detector detects that the portable device is connected to the terminal device. As such, the language of the claim 9 in regard to the portable device describes the function of the detector and the function of the first controller. We remind the Examiner that a patent applicant is free to recite features of an apparatus either structurally or functionally. *See In re Swinehart*, 439 F.2d 210, 212 (CCPA 1971) (“[T]here is nothing intrinsically wrong with [defining something by what it does rather than what it is] in drafting patent claims.”).

Secondly, we agree with the Appellant that Peterson does not disclose a controller that updates attributes on a portable device. In this regard we agree with the Appellant that as the Examiner considers elements 70, 86 and 98 to be the terminal device (Answer 3), Peterson does not disclose a portable device. Even if we were to consider the storage medium 70 to be a portable device, Peterson does not disclose that attributes on the storage medium 70 are updated by a controller. Rather, the controller updates accounting points on the first memory 34, 91 on the terminal device, not on the storage medium 70. The updating of accounting points on the first memory 34, 91 allows a user to access information on the storage medium 70. However, the controller does not access or send information to the storage medium 70 and therefore does not meet the limitations of claim 9.

In view of the foregoing, we will not sustain the Examiner's rejection of claim 9.

The decision of the Examiner is reversed.

REVERSED

JRG

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